

08 CV 4441

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BIVONA & COHEN, P.C. and
JOSEPH V. FIGLIOLI,

Plaintiffs,

08 Civ. _____

- against -

**NOTICE OF
RELATED CASE**

WINDY RICHARDS aka WINDY OGANDO,

Defendant.

-x-

TO: The United States District Court for the Southern District of New York

PLEASE TAKE NOTICE that Defendant Windy Richards, by and through her attorneys, Emery Celli Brinckerhoff & Abady LLP, hereby submits this Related Case Statement pursuant to Rule 1.6(a), Rule 15(a), and Rule 15(c) of the Local Rules of this Court.

1. Defendant Ms. Richards believes and hereby asserts that this case is related to an existing case that has been assigned to Hon. McMahon: *Windy Richards v. Bivona & Cohen PC, Joseph Figliolo, John Bivona, Roderick Coyne, Jan Michael Ryfkogel, Andrew Sapon, Robert Macchia, Richard Kubik, Marlene Monteleone, and John/Jane Does 1-10*, Docket No. 08 Civ. 04433(CM)(GWG) ("the Richards Action").

2. The Richards Action is an employment discrimination action brought by plaintiff Windy Richards, a legal secretary, against a New York City law firm, Bivona & Cohen PC ("Bivona" or "the law firm") and a number of its senior law partners, including Joseph Figliolo. Ms. Richards, a 37 year-old single mother of three children, has been employed at

Bivona since August 2007. In the Richards Action, Ms. Richards alleges that throughout her employment at the law firm, she was subjected to a relentless, cruel, predatory, and extreme campaign of sexual harassment and inappropriate conduct by senior partner Mr. Figliolo. Bivona did nothing to discourage or discipline Mr. Figliolo or curtail his overt misconduct. Unchecked and indeed condoned and ratified, Mr. Figliolo's unlawful behavior persisted. On November 16, 2007, Mr. Figliolo sexually assaulted and raped Ms. Richards in the office during work hours. Ms. Richards has asserted claims for unlawful discrimination and retaliation under Title VII, for race discrimination pursuant to 42 U.S.C. §§ 1981 and 1985, under the Americans with Disabilities Act, the New York State Human Rights Law, the New York City Human Rights law, and state common law.

3. The plaintiffs in *this* action, Bivona & Cohen PC ("Bivona" or "the law firm") and its senior law partner, Joseph Figliolo, are two of the named defendants in the Richards Action. After Ms. Richards reported the sexual assault, retained counsel and threatened legal action, Mr. Figliolo and his law firm filed this anticipatory and baseless "preemptive" declaratory judgment action in state court primarily seeking a judgment declaring that they have not violated Ms. Richards' rights under federal, state and local anti-discrimination laws. For good measure, Figliolo and Bivona also assert a variety of tort claims such as "prima facie tort." The aim of this action is transparent: to retaliate against Ms. Richards for reporting Figliolo's rape and sexual harassment, to intimidate Ms. Richards into silence and/or retraction of her truthful charges, and to chill other law firm employees who dare to tell the truth in support of Ms. Richards.

4. The legal and factual issues in the two cases are identical. Each case arises

out Ms. Richards's allegations that the law firm and Figliolo sexually harassed her, discriminated against her, and ultimately, sexually assaulted her. The documents and witnesses in the two cases will be identical.

5. For these reasons, Defendant submits that treating this case as related to the Richards Action currently pending before Judge McMahon will conserve the resources of the Court and of the litigants, and that it will serve the convenience of the parties and the witnesses.

Dated: May 12, 2008
New York, New York

EMERY CELLI BRINCKERHOFF &
ABADY LLP

By: Jonathan Abady
Jonathan S. Abady (JA 5147)
Mariann Meier Wang (MW 7417)
Matthew D. Brinckerhoff (MB 3552)
Katherine Rosenfeld (KR 8525)

75 Rockefeller Plaza, 20th Floor
New York, New York 10019
Tel.: (212) 763-5000

JOSEPH & HERZFELD LLP
757 Third Avenue, 25th Floor
New York, New York 10017
Tel.: (212) 688-5640

Attorneys for Defendant Windy Richards

To: EPSTEIN BECKER & GREEN, P.C.
Ronald S. Green
250 Park Avenue
New York, New York 10177-1211
(212) 351-4500

KAUFMAN BORGEEST & RYAN LLP
Joan M. Gilbride
99 Park Avenue
New York, New York 10016

Attorneys for Plaintiffs